

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

FRANCISCO VEGA, JR.,

Petitioner,

v.

CALIFORNIA BOARD OF PAROLE
HARINGS,

Respondent.

No. 1:21-cv-01029-DAD-EPG (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
PETITION FOR WRIT OF HABEAS
CORPUS

(Doc. No. 7)

Petitioner Francisco Vega, Jr. is proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On July 1, 2021, the assigned magistrate judge issued findings and recommendations, recommending that the petition for writ of habeas corpus be dismissed for lack of jurisdiction. (Doc. No. 7.) The findings and recommendations were served on petitioner and contained notice that any objections were to be filed within thirty (30) days of the date of service of the findings and recommendations. (*Id.* at 4.) After the court granted him an extension of time to do so, petitioner filed timely objections. (Doc. Nos. 10, 11.)

In his objections, petitioner reiterates his arguments that he is entitled to a youth offender parole suitability hearing to establish his parole eligibility with respect to the sentence of life without the possibility of parole which he is currently serving. (Doc. No. 11.) Petitioner contends that his claims are cognizable on federal habeas because “federal habeas proceedings

1 incorporate decisions where petitioners are granted relief, and such relief does not automatically
2 qualify for early or immediate relief[.]” (*Id.* at 7.) Petitioner cites several cases in support of his
3 argument in this regard, however, the cited cases are inapposite because each involved the
4 granting of federal habeas relief resulted in an immediate change to the sentences imposed in the
5 cases of those juvenile offenders. *See Roper v. Simmons*, 543 U.S. 551, 578–79 (2005) (setting
6 aside the death penalty imposed on juvenile offender); *Graham v. Florida*, 560 U.S. 48, 82 (2010)
7 (holding that “[t]he Constitution prohibits the imposition of a life without parole sentence on a
8 juvenile offender who did not commit homicide.”); *Miller v. Alabama*, 567 U.S. 460, 489 (2012)
9 (holding that a judge or jury must have the opportunity to consider mitigating circumstances
10 before imposing a life without parole sentence for juveniles).

11 Most importantly, petitioner in this federal habeas action does not challenge the
12 constitutionality of his life without the possibility of parole sentence for aiding and abetting first-
13 degree murder when he was twenty years old. (Doc. Nos. 1 at 7; 11 at 4–5, 7.) Rather, petitioner
14 challenges being denied a youth parole suitability hearing under California law. (*Id.*) “Petitioner’s
15 contention that the Board denied him an ‘SB 261’ hearing alleges only a violation of state law, for
16 which federal habeas relief is unavailable.” *Wheeler v. Gastelo*, No. CV 19-1094-CJC(E), 2019
17 WL 3069172, at *5 (C.D. Cal. 2019), *report and recommendation adopted by* 2019 WL 3067588
18 (C.D. Cal. July 8, 2019); *see also Allen v. Kernan*, No. CV 16-4803 AB (RAC) 2016 WL 6652718,
19 at *4 (C.D. Cal. Oct. 5, 2016), *report and recommendation adopted by* 2016 WL 6652705 (C.D.
20 Cal. Nov. 9, 2016) (rejecting a federal habeas claim that SB 261 violated petitioner’s rights under
21 the equal protection clause); *Glass v. Kernan*, No. 2:18-cv-00641-PA-MAA, 2019 WL 2062541,
22 at *2 (C.D. Cal. April 8, 2019) (dismissing a civil rights action asserting an equal protection claim
23 based upon California’s SB 261). This is because federal habeas relief is available only for
24 violations of federal law, not for errors under state law. *See* 28 U.S.C. § 2254(a); *Middleton v.*
25 *Cupp*, 768 F.2d 1083, 1085 (1985). Decisions regarding parole are questions of state law. *See*
26 *Valdivia v. Schwarzenegger*, 599 F.3d 984, 991 (9th Cir. 2010). Alleged misapplication of state
27 laws in this area cannot be transformed into a federal claim merely by invoking the United States
28 Constitution. *See Langford v. Day*, 110 F.3d 1380, 1389 (9th Cir. 1997) (petitioner may not

1 transform state law issue into federal one by asserting violation of due process). Petitioner's
2 argument that the magistrate judge erred in finding his claims not to be cognizable because "success
3 on [Petitioner]'s claims would not necessarily lead to his immediate or earlier release from
4 confinement" is unpersuasive. *Nettles v. Grounds*, 830 F.3d 922, 934 (9th Cir. 2016) (en banc)
5 (quoting *Skinner v. Switzer*, 562 U.S. 521, 535 n.13 (2011)).

6 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a
7 *de novo* review of the case. Having carefully reviewed the entire file, including petitioner's
8 objections, the court concludes that the pending findings and recommendation are supported by
9 the record and proper analysis.

10 Having found that petitioner is not entitled to habeas relief, the court now turns to whether
11 a certificate of appealability should issue. A petitioner seeking a writ of habeas corpus has no
12 absolute entitlement to appeal a district court's denial of his petition, and an appeal is only
13 allowed in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003); *see also* 28
14 U.S.C. § 2253. The court should issue a certificate of appealability if "reasonable jurists could
15 debate whether (or, for that matter, agree that) the petition should have been resolved in a
16 different manner or that the issues presented were 'adequate to deserve encouragement to proceed
17 further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S.
18 880, 893 & n.4 (1983)). In the present case, the court finds that reasonable jurists would not find
19 the court's determination that the petition should be dismissed debatable or wrong, or that
20 petitioner should be allowed to proceed further. Therefore, the court declines to issue a certificate
21 of appealability.

22 Accordingly,

- 23 1. The findings and recommendations issued on July 1, 2021 (Doc. No. 7) are
24 adopted in full;
- 25 2. The petition for writ of habeas corpus is dismissed;

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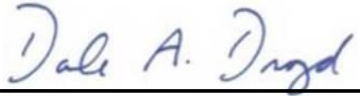
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1 3. The Clerk of the Court is directed to close the case; and

2 4. The court declines to issue a certificate of appealability.

3 IT IS SO ORDERED.

4 Dated: **October 25, 2021**


UNITED STATES DISTRICT JUDGE